

The Appeals Board has considered the record and adopted the stipulations listed in the Award of April 29, 1994.

ISSUES

The sole issue to be considered on appeal is whether the respondent had knowledge of claimant's pre-existing impairment at the time respondent employed or retained claimant in its employment as required by K.S.A. 44-567(b) in order to impose liability on the Kansas Workers Compensation Fund.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments of the parties, the Appeals Board finds that the respondent has established the requisite knowledge of a handicap sufficient to impose liability on the Kansas Workers Compensation Fund pursuant to K.S.A. 44-567(b).

The record establishes that claimant was hired by Mr. Gale McCort, manager of Farm Bureau Insurance agency in Sublette, Kansas. Mr. McCort had known the claimant for approximately fifteen (15) years as she had worked cleaning his house before she began her employment for respondent. Mr. McCort testified that when he hired her to clean his house he asked her if she had any deformities that would hinder her from cleaning. She advised him that she had had an operation on her back but included it had not bothered her for a long time. Mr. McCort told her not to lift anything heavy and not to turn mattresses. When he hired her as his secretary he was still aware of the back surgery. He indicates that he cautioned her, as he did all his secretarial employees, not to do anything that would cause injury. Although the evidence reflects that respondent knew little, if any thing more, than this general information, the Appeals Board, nevertheless, considers the information sufficient to establish the requisite knowledge. An employee is not required to exhibit continuing disability in order to be a "handicapped" employee. *Ramirez v. Rockwell Int'l*, 10 Kan. App. 2d 403, 701 P.2d 336, (1985). Actual mental reservation is not required. See *Denton v. Sunflower Electric Co-op*, 12 Kan. App. 2d 262, 740 P.2d 98 (1987) *aff'd* 242 Kan. 430, 748 P.2d 420 (1988). Knowledge that an individual has undergone back surgery does equate to knowledge of a handicap and satisfies the requirement for imposing liability against the Kansas Workers Compensation Fund. The decision of the Administrative Law Judge is, therefore, affirmed.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the decision of Administrative Law Judge Thomas F. Richardson, dated April 29, 1994, should be, and hereby is, affirmed in all respects.

WHEREFORE, AN AWARD IS ENTERED IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the respondent, Haskell County Farm Bureau and Gale McCort, and its insurance carrier, Farm Bureau Insurance, and against the Kansas Workers Compensation Fund in the sum of \$9,108.00 for an accidental injury to claimant, Clara Sue Walker, occurring on March 15, 1991. This amount is ordered paid as forthwith.

Fees and expenses of administration of the Kansas Workers Compensation Act are assessed against the Kansas Workers Compensation Fund to be paid direct as follows:

Forbes Reporting Services	
Deposition of Gale McCort	\$118.30

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jim Mills, Garden City, KS
Michael Harris, Wichita, KS
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director

WHEREFORE, AN AWARD IS ENTERED IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the respondent and insurance carrier, Haskell County Farm

Bureau and Gale McCort, and its insurance carrier, Farm Bureau Insurance, and against the Kansas Workers Compensation Fund in the sum of \$21,029.99 for previously paid authorized medical, temporary total disability for seventy (70) weeks at the rate of \$176.01 per week for a total of \$12,320.69, and \$9,108.00 for permanent partial disability settlement for a total of \$42,458.68 for an accidental injury occurring to the claimant, Clara Sue Walker, on March 15, 1991. This amount is ordered paid forthwith.

Fees and expenses of administration of the Kansas Workers Compensation Act are assessed against the Kansas Workers Compensation Fund to be paid directly as follows:

Forbes Reporting Services	
Deposition of Gale McCort	\$118.30

IT IS SO ORDERED.

Dated this ____ day of March, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Jim Mills, Garden City, KS
Michael Harris, Wichita, KS
Thomas F. Richardson, Administrative Law Judge
George Gomez, Director